

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Proposing rule making related to waivers and providing an opportunity for public comment

The Inspections and Appeals Department hereby proposes to amend Chapter 6, “Uniform Waiver and Variance Rules,” Chapter 41, “Psychiatric Medical Institutions for Children (PMIC),” Chapter 50, “Health Care Facilities Administration,” Chapter 51, “Hospitals,” Chapter 57, “Residential Care Facilities,” Chapter 58, “Nursing Facilities,” Chapter 60, “Minimum Physical Standards for Residential Care Facilities,” Chapter 61, “Minimum Physical Standards for Nursing Facilities,” Chapter 63, “Residential Care Facility—Three- to Five-Bed Specialized License,” Chapter 64, “Intermediate Care Facilities for the Intellectually Disabled,” Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI),” and Chapter 71, “Subacute Mental Health Care Facilities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 10A.104(5).

State or Federal Law Implemented

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

Purpose and Summary

The proposed amendments update rules in accordance with changes included in 2020 Iowa Acts, House File 2389. The legislation called for removal of the word “variance” when the word is used in relation to “waiver.” This rule making also removes a reference to granting a waiver upon the Department’s own motion, updates an outdated term for administrative rules, and updates references to the Department’s attached units.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: ashleigh.hackel@dia.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend **481—Chapter 6**, title, as follows:

UNIFORM WAIVER AND VARIANCE RULES

ITEM 2. Amend rule 481—6.1(10A,17A,ExecOrd11) as follows:

481—6.1(10A,17A,ExecOrd11) Applicability. This chapter outlines a uniform process for the granting of waivers ~~or variances~~ from rules adopted by the department. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the department.

ITEM 3. Amend rule **481—6.2(10A,17A,ExecOrd11)**, definition of “Attached units,” as follows:
“*Attached units*” means units attached to the department and includes the employment appeal board, ~~hospital licensing board, state citizen foster care review board~~ child advocacy board, racing and gaming commission, and state public defender’s office.

ITEM 4. Amend rules 481—6.4(10A,17A,ExecOrd11) to 481—6.8(10A,17A,ExecOrd11) as follows:

481—6.4(10A,17A,ExecOrd11) Compliance with statute. The department shall not grant a petition for waiver ~~or a variance~~ from a rule unless a statute or other provision of law has delegated authority to the department sufficient to justify that action and the waiver ~~or variance~~ is consistent with the statute or other provision of law. No waiver ~~or variance~~ may be granted from a requirement that is imposed by statute, unless the statute itself specifically authorizes that action. Any waiver ~~or variance~~ must be consistent with statute.

481—6.5(10A,17A,ExecOrd11) Criteria for waiver ~~or variance~~. At the sole discretion of the director/board, the director/board may issue an order, in response to a completed petition ~~or on the department’s own motion~~, granting a waiver ~~or variance~~ from a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person or a specific and narrowly drawn class of persons if the director/board finds based on clear and convincing evidence that:

1. The application of the rule to the petitioner would pose an undue hardship on the person or class of persons for whom the waiver ~~or variance~~ is requested;

2. The waiver ~~or variance~~ from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person;

3. The provisions of a rule subject to a petition for a waiver ~~or variance~~ are not specifically mandated by statute or another provision of law; and

4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested.

481—6.6(10A,17A,ExecOrd11) Filing of petition. A petition for a waiver ~~or variance~~ must be submitted in writing to the Department of Inspections and Appeals, Office of the Director, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. If the petition relates to a pending contested case, the petition shall also be filed in the contested case proceeding.

481—6.7(10A,17A,ExecOrd11) Content of petition. A petition for waiver ~~or variance~~ shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver ~~or variance~~ is being requested and the case number of any related contested case.

2. A description and citation of the specific rule from which a waiver ~~or variance~~ is requested.

3. The specific waiver ~~or variance~~ requested, including the precise scope and operative period that the waiver ~~or variance~~ will extend.

4. The relevant facts that the petitioner believes would justify a waiver ~~or variance~~. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver ~~or variance~~.

5. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department that would be affected by the proposed waiver ~~or variance~~, including a description of each regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department within the last five years.

6. Any information known to the requester regarding the department's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver ~~or variance~~.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver ~~or variance~~.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver ~~or variance~~.

481—6.8(10A,17A,ExecOrd11) Additional information. Prior to issuing an order granting or denying a waiver ~~or variance~~, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the department may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the department or department's designee.

ITEM 5. Amend rules 481—6.10(10A,17A,ExecOrd11) to 481—6.17(10A,17A,ExecOrd11) as follows:

481—6.10(10A,17A,ExecOrd11) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver ~~or variance~~ of rule filed within a contested case and shall otherwise apply to agency proceedings for a waiver ~~or variance~~ only when the department so provides by rule or order or is required to do so by statute.

481—6.11(10A,17A,ExecOrd11) Ruling. An order granting or denying a waiver ~~or variance~~ shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

6.11(1) Director/board discretion. The decision on whether the circumstances justify the granting of a waiver ~~or variance~~ shall be made at the discretion of the director upon consideration of all relevant factors, except for the below-listed programs, for which the applicable board, commission or state public defender shall make the decision, upon consideration of all relevant factors:

- a. Employment appeal board, 486—Chapter 1.
- b. ~~Hospital licensing board, 481—Chapter 51.~~
- c. ~~b.~~ State citizen foster care review Child advocacy board, 489—Chapter 1.
- d. ~~c.~~ Racing and gaming commission, 491—Chapter 1.
- e. ~~d.~~ State public defender's office, 493—Chapter 1.

6.11(2) Burden of persuasion. The petitioner has the burden of persuasion when a petition is filed for a waiver ~~or variance~~ from a department rule. The standard of proof is clear and convincing evidence.

6.11(3) Special waiver ~~or variance~~ rules not precluded. This chapter shall not preclude the department from granting waivers ~~or variances~~ in other contexts or on the basis of other standards if a statute authorizes the department to do so and the department deems it appropriate to do so.

6.11(4) Administrative deadlines. When the rule from which a waiver ~~or variance~~ is sought establishes administrative deadlines, the director/board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons similarly situated.

6.11(5) Conditions. The director/board may condition the granting of the waiver ~~or variance~~ on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means and in compliance with the following provisions:

- a. Each petition for a waiver ~~or variance~~ shall be evaluated by the department based on the unique, individual circumstances set out in the petition;
- b. A waiver ~~or variance~~, if granted, shall be drafted by the department so as to provide the narrowest exception possible to the provisions of the rule;
- c. The department may place on a waiver ~~or variance~~ a condition that the department finds desirable to protect the public health, safety, and welfare;
- d. A waiver ~~or variance~~ shall not be permanent, unless the petitioner can show that a temporary waiver ~~or variance~~ would be impracticable; and
- e. If a temporary waiver ~~or variance~~ is granted, there is no automatic right to renewal. At the sole discretion of the department, a waiver ~~or variance~~ may be renewed if the department finds that all of the factors set out in rule ~~481—6.5(10A,17A,ExecOrd11)~~ remain valid.

6.11(6) Time for ruling. The director/board shall grant or deny a petition for a waiver ~~or variance~~ as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the director/board has the discretion to wait until the contested case is resolved before entering an order on the petition for waiver ~~or variance~~.

6.11(7) When deemed denied. Failure of the director/board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the director/board.

6.11(8) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

481—6.12(10A,17A,ExecOrd11) Public availability.

6.12(1) Subject to the provisions of Iowa Code section 17A.3(1) “e,” the department shall maintain a record of all orders granting or denying waivers ~~and variances~~ under this chapter. All final rulings in response to requests for waivers ~~or variances~~ shall be indexed and available to members of the public at the director's office.

6.12(2) ~~Twice each year~~ Within 60 days of granting or denying a waiver, the department must ~~prepare a report that~~ make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information.

a. The submission shall:

1. ~~(1)~~ Identifies Identify the rules for which a waiver ~~or variance~~ has been granted or denied;
2. ~~(2)~~ The Identify the number of times a waiver ~~or variance~~ was granted or denied for each rule;
3. ~~(3)~~ A Include a citation to the statutory provisions implemented by these rules; and
4. ~~(4)~~ A Include a general summary of the reasons justifying the department's actions.

b. To the extent practicable, the department shall include information detailing the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

481—6.13(10A,17A,ExecOrd11) Voiding or cancellation. A waiver ~~or variance~~ is void if the material facts upon which the request is based are not true or if material facts have been withheld. The director/board may at any time cancel a waiver ~~or variance~~ upon appropriate notice and hearing if the director/board finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver ~~or variance~~ have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

481—6.14(10A,17A,ExecOrd11) Violations. Violation of conditions in the waiver ~~or variance~~ approval is the equivalent of violation of the particular rule for which the waiver ~~or variance~~ is granted and is subject to the same remedies or penalties.

481—6.15(10A,17A,ExecOrd11) Defense. After the director/board issues an order granting a waiver ~~or variance~~, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

481—6.16(10A,17A,ExecOrd11) Appeals. Any request for an appeal from a decision granting or denying a waiver ~~or variance~~ shall be in accordance with the procedures provided in Iowa Code chapter 17A and ~~departmental rules~~ rules adopted by the department. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

481—6.17(10A,17A,ExecOrd11) Sample petition for waiver ~~or variance~~.

BEFORE THE DEPARTMENT OF INSPECTIONS AND APPEALS

Petition by (insert the name of petitioner)
for the waiver of (insert rule citation)
relating to (insert the subject matter).

}

PETITION FOR WAIVER

Include the following information in the petition for waiver where applicable and known:

1. Provide the petitioner's (the person that is asking for the waiver ~~or variance~~) name, address and telephone number.
2. Describe and cite the specific rule from which a waiver ~~or variance~~ is requested.
3. Describe the specific waiver ~~or variance~~ requested. Include the exact scope and time period that the waiver ~~or variance~~ will extend.
4. Explain the important facts that the petitioner believes justify the waiver ~~or variance~~. Include in your explanation (a) why application of the rule would pose an ~~and~~ undue hardship to the petitioner; (b) why granting the waiver ~~or variance~~ would not prejudice the substantial legal rights of any person; (c) state whether the provisions of a rule subject to this petition are specifically mandated by statute or another provision of law; and (d) state whether public health, safety and welfare will be affected if the requested waiver ~~or variance~~ is granted.
5. Provide history of prior contacts between the department and the petitioner relating to the regulated activity, license, audit, investigation, inspection or representation that would be affected

by the waiver ~~or variance~~. In that history, include a description of each affected regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the department within the last five years.

6. Provide information known to the petitioner regarding the department's treatment of similar cases.

7. Provide the name, address and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver ~~or variance~~.

8. Provide the name, address and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver ~~or variance~~.

9. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver ~~or variance~~.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

ITEM 6. Amend rule 481—41.5(135H) as follows:

481—41.5(135H) ~~Variances~~ Waivers. ~~Variances~~ Waivers from these rules may be granted by the director of the department:

1. When the need for a ~~variance~~ waiver has been established; and
2. When there is no danger to the health, safety, welfare or rights of any child.

The ~~variance~~ waiver will apply only to a specific PMIC.

~~Variances~~ Waivers shall be reviewed at the time of each licensure survey by the department to determine continuing need.

41.5(1) To request a ~~variance~~ waiver, the licensee must:

- a. Apply in writing on a form provided by the department;
- b. Cite the rule or rules from which a ~~variance~~ waiver is desired;
- c. State why compliance with the rule or rules cannot be accomplished;
- d. Explain how the ~~variance~~ waiver is consistent with the individual program plans; and
- e. Demonstrate that the requested ~~variance~~ waiver will not endanger the health, safety, welfare or rights of any child.

41.5(2) Upon receipt of a request for ~~variance~~ waiver, the director shall:

- a. Examine the rule from which the ~~variance~~ waiver is requested;
- b. Evaluate the requested ~~variance~~ waiver against the requirement of the rule to determine whether the request is necessary to meet the needs of the children; and
- c. Examine the effect of the requested ~~variance~~ waiver on the health, safety or welfare of the children.

ITEM 7. Amend paragraph **41.16(1)“b”** as follows:

- b. ~~Variances~~ Waiver requests and responses;

ITEM 8. Amend subparagraph **50.8(1)“a”(2)** as follows:

- (2) ~~Variances~~ Waiver requests and responses,

ITEM 9. Amend subrule 51.38(2) as follows:

51.38(2) Long-term care service general requirements. The general requirements for the hospital's long-term care service shall be the same as required by Iowa Code chapter 135C and the rules promulgated under its authority for the category of health care facility involved. Exceptions to those

rules requiring distinct parts to be established may be waived where it is found to be in the best interest of the long-term care resident and of no detriment to the patients in the hospital.

Requests for ~~variances~~ waivers to other rules for which equivalent health, safety and welfare provisions are provided may be made in accordance with the appropriate health care facility rules. In any case where a distinct part has been established for long-term residents or where the department has given approval for the intermingling of such residents with acute care patients, the same provisions and rules promulgated under Iowa Code chapter 135C shall be applicable. These rules include, but are not limited to, the same restrictions, obligations, programs of care, personal and rehabilitative services and all of the conveniences and considerations which the residents would normally have received in a licensed health care facility.

ITEM 10. Amend subrules 51.50(2) and 51.50(3) as follows:

51.50(2) *Submission of construction documents.*

a. Submissions of architectural technical documents, engineering documents, and plans and specifications to the building code commissioner are the responsibility of the owner of the building or facility, although the actual submission may be completed by an authorized agent of the owner or the responsible design professional.

b. Submissions shall comply with the provisions of rule 661—300.4(103A).

c. The responsible design professional shall certify that the building plans meet the requirements specified in subrule 51.50(1), unless a ~~variance~~ waiver has been granted pursuant to subrule 51.50(3).

51.50(3) *Variances Waivers.* The director of the department may grant ~~variances~~ waivers to building and construction guidelines as contained in the Guidelines for Design and Construction of Hospitals, 2018 edition. The hospital or off-site premises must submit a ~~variance~~ waiver request in writing to the director. The request must demonstrate how patient safety and the quality of care offered will not be compromised by the ~~variance~~ waiver. The facility must demonstrate its ability to completely fulfill all other requirements of the service. The director shall make a written determination of the request. In determining whether a ~~variance~~ waiver request shall be granted, the director shall give consideration to the following conditions and to any other conditions the director deems relevant:

a. to c. No change.

d. The ~~variance~~ waiver shall be limited to the specific project under consideration and shall not be construed as establishing a precedent for similar acceptance in other cases;

e. and f. No change.

ITEM 11. Amend rule 481—57.2(135C,17A) as follows:

481—57.2(135C,17A) *Waiver or variance.* A ~~waiver or variance~~ from these rules may be granted by the director of the department in accordance with 481—Chapter 6. A request for ~~waiver or variance~~ will be granted or denied by the director within 120 calendar days of receipt.

ITEM 12. Amend rule 481—58.2(135C) as follows:

481—58.2(135C) *Variances Waivers.* ~~Variances~~ Waivers from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for ~~variance~~ a waiver has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the ~~variance~~ waiver will apply only to an individual nursing facility. ~~Variances~~ Waivers will be reviewed at the discretion of the director of the department of inspections and appeals.

58.2(1) To request a ~~variance~~ waiver, the licensee must:

a. Apply for ~~variance~~ a waiver in writing on a form provided by the department;

b. Cite the rule or rules from which a ~~variance~~ waiver is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain alternate arrangements or compensating circumstances which justify the ~~variance~~ waiver;

e. Demonstrate that the requested variance waiver will not endanger the health, safety, or welfare of any resident.

58.2(2) Upon receipt of a request for variance a waiver, the director of inspections and appeals will:

a. Examine the rule from which variance a waiver is requested to determine that the request is necessary and reasonable;

b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;

c. Examine the effect of the requested variance waiver on the health, safety, or welfare of the residents;

d. Consult with the applicant if additional information is required.

58.2(3) Based upon these studies, approval of the variance waiver will be either granted or denied within 120 days of receipt.

ITEM 13. Amend rule 481—60.2(135C) as follows:

481—60.2(135C) Variances Waivers. Procedures for variances waivers in rule 481—57.2(135C) or 481—63.2(135C) ~~of the rules of this department~~ are hereby incorporated by reference as part of this chapter. Certain occupancies, conditions in the area, or the site may make compliance with the rules impractical or impossible. Certain conditions may justify minor modification of the rules. In specific cases, variances waivers to the rules may be permitted by the reviewing authority.

ITEM 14. Amend subrule 61.3(4) as follows:

61.3(4) The responsible design professional shall certify that the building plans meet the requirements specified in this chapter, unless a variance waiver has been granted pursuant to rule 481—61.4(135C).

ITEM 15. Amend rule 481—61.4(135C) as follows:

481—61.4(135C) Variances Waivers.

61.4(1) Procedures in rule 481—58.2(135C) for requesting a variance waiver are incorporated by reference as part of this chapter.

61.4(2) Certain resident populations, conditions in the area, or the site may justify variances waivers. In specific cases, variances waivers to the rules may be granted by the director after the following conditions are met:

a. to f. No change.

ITEM 16. Amend rule 481—63.2(135C,17A) as follows:

481—63.2(135C,17A) Waiver or variance. A waiver ~~or variance~~ from these rules may be granted by the director of the department in accordance with 481—Chapter 6. A request for waiver ~~or variance~~ will be granted or denied by the director within 120 calendar days of receipt.

ITEM 17. Amend rule 481—64.2(135C) as follows:

481—64.2(135C) Variances Waivers. Variances Waivers from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for variance a waiver has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance waiver will apply only to an individual intermediate care facility for the intellectually disabled. Variances Waivers will be reviewed at the discretion of the director of the department of inspections and appeals.

64.2(1) To request a variance waiver, the licensee must:

a. Apply for variance a waiver in writing on a form provided by the department;

b. Cite the rule or rules from which a variance waiver is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain alternate arrangements or compensating circumstances which justify the variance waiver;

e. Demonstrate that the requested variance waiver will not endanger the health, safety, or welfare of any resident.

64.2(2) Upon receipt of a request for variance a waiver, the director of the department of inspections and appeals will:

a. Examine the rule from which variance a waiver is requested to determine that the request is necessary and reasonable;

b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;

c. Examine the effect of the requested variance waiver on the health, safety, or welfare of the residents;

d. Consult with the applicant if additional information is required.

64.2(3) Based upon these studies, approval of the variance waiver will be either granted or denied within 120 days of receipt.

ITEM 18. Amend rule 481—65.2(135C), introductory paragraph, as follows:

481—65.2(135C) Application for license. In order to obtain an initial license for an ICF/PMI, the applicant must comply with the rules and standards contained in Iowa Code chapter 135C and the standards in 481—Chapter 61. Variances Waivers from 481—Chapter 61 regulations are allowed under rule 481—61.2(135C). An application must be submitted to the department which states the type and category of license for which the facility is applying.

ITEM 19. Amend rule 481—65.4(135C) as follows:

481—65.4(135C) Variances Waivers. Variances Waivers from these rules may be granted by the director of the department when:

1. The need for a variance waiver has been established consistent with the résumé of care or the resident's individual program plan.

2. There is no danger to the health, safety, welfare or rights of any resident.

3. The variance waiver will apply only to a specific intermediate care facility for the mentally ill. Variances Waivers shall be reviewed at least at the time of each licensure survey and any other time by the department to see if the need for the variance waiver is still acceptable.

65.4(1) To request a variance waiver, the licensee must:

a. Apply in writing on a form provided by the department;

b. Cite the rule or rules from which a variance waiver is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain how the variance waiver is consistent with the résumé of care or the individual program plan; and

e. Demonstrate that the requested variance waiver will not endanger the health, safety, welfare or rights of any resident.

65.4(2) Upon receipt of a request for variance waiver, the director will:

a. Examine the rule from which the variance waiver is requested;

b. Evaluate the requested variance waiver against the requirement of the rule to determine whether the request is necessary to meet the needs of the residents;

c. Examine the effect of the requested variance waiver on the health, safety or welfare of the residents;

d. Consult with the applicant to obtain additional written information if required; and

e. Obtain approval of the Iowa mental health and disability services commission, when the request is for a variance waiver from the requirement for qualification of a mental health professional.

65.4(3) Based upon this information, approval of the variance waiver will be either granted or denied within 120 days of receipt.

ITEM 20. Amend rule 481—71.5(135G) as follows:

481—71.5(135G) ~~Variances~~ Waivers.

71.5(1) ~~Variances~~ Waivers from these rules may be granted by the director of the department if, in addition to the requirements of 481—Chapter 6:

- a.* The need for a ~~variance~~ waiver has been established consistent with the résumé of care or the resident's individual program plan; and
- b.* There is no danger to the health, safety, welfare, or rights of any resident.

71.5(2) The ~~variance~~ waiver will apply only to a subacute care facility.

71.5(3) ~~Variances~~ Waivers shall be reviewed by the department at the time of each licensure survey to verify whether the facility is still eligible for the ~~variance~~ waiver.